

**CERTIFIED FOR PARTIAL PUBLICATION\***

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

In re MARK B. et al., Persons Coming  
Under the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

Plaintiff,

v.

LESLIE B.,

Defendant;

DALE S. WILSON,

Real Party in Interest and  
Respondent;

JULIE LYNN WOLFF,

Real Party in Interest and  
Appellant.

C049885, C050371

(Super. Ct. Nos. JD217655,  
JD217656, JD217657, JD217658)

APPEAL from a judgment of the Superior Court of Sacramento  
County, Carol Chrisman, Juvenile Court Referee. Affirmed.

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\* Pursuant to California Rules of Court, rule 8.1110, this  
opinion is certified for publication with the exception of parts  
III and IV of the Discussion.

Law Office of Julie Lynn Wolff and Julie Lynn Wolff for  
Real Party in Interest and Appellant.

Weintraub Genshlea Chediak, Thadd A. Blizzard and  
Charles L. Post for Real Party in Interest and Respondent.

Robert A. Ryan, Jr., County Counsel and Lilly C. Frawley,  
Deputy County Counsel as Amicus Curiae for Real Party in  
Interest and Respondent.

"Code of Civil Procedure section 128.7 provides that the  
filing of a pleading certifies that, to the attorney or  
unrepresented party's 'knowledge, information, and belief,  
formed after an inquiry reasonable under the circumstances,' the  
pleading is not being presented 'primarily for an improper  
purpose,' the claims, defenses and other legal contentions  
therein are 'warranted,' and the allegations and other factual  
contentions 'have evidentiary support.' (*Id.*, subd. (b).) If  
these standards are violated, the court can impose an  
appropriate sanction sufficient to deter future misconduct,  
including a monetary sanction. (*Id.*, subds. (c), (d).)" (*Stop  
Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th  
553, 575.)<sup>1</sup>

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<sup>1</sup> Code of Civil Procedure, section 128.7 (section 128.7)  
provides: "(a) Every pleading, petition, written notice of  
motion, or other similar paper shall be signed by at least one  
attorney of record in the attorney's individual name, or, if the  
party is not represented by an attorney, shall be signed by the  
party. Each paper shall state the signer's address and  
telephone number, if any. Except when otherwise provided by  
law, pleadings need not be verified or accompanied by affidavit.  
An unsigned paper shall be stricken unless omission of the

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signature is corrected promptly after being called to the attention of the attorney or party.

"(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

"(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

"(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

"(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

"(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

"(c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.

"(1) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or any other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to

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the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

"(2) On its own motion, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b), unless, within 21 days of service of the order to show cause, the challenged paper, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected.

"(d) A sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (1) and (2), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

"(1) Monetary sanctions may not be awarded against a represented party for a violation of paragraph (2) of subdivision (b).

"(2) Monetary sanctions may not be awarded on the court's motion unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

"(e) When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.

"(f) In addition to any award pursuant to this section for conduct described in subdivision (b), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is

This appeal raises three questions under Code of Civil Procedure section 128.7 (section 128.7): (1) May a juvenile court hearing a dependency case (Welf. & Inst. Code, § 300) lawfully impose sanctions under section 128.7? (2) May a juvenile court referee lawfully do so? (3) If lawfully made, was the sanctions order justified on the record in this case?

For reasons that follow, in the published portion of the opinion, we answer the first two questions, "Yes." In the unpublished portion of the opinion, we conclude the sanctions imposed in this case were justified.

In appeal No. C049885, Leslie B., the mother of minors Mark B., Jr., Elijah G., Angelique G., and Caryssa C., sought review of the juvenile court's findings and orders as to the minors; in addition, Leslie B.'s attorney, Julie Lynn Wolff, sought review of the court's order sanctioning Wolff pursuant to section 128.7. In appeal No. C050371, Wolff additionally sought review

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guilty of fraud, oppression, or malice in maintaining the action.

"(g) This section shall not apply to disclosures and discovery requests, responses, objections, and motions.

"(h) A motion for sanctions brought by a party or a party's attorney primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, shall itself be subject to a motion for sanctions. It is the intent of the Legislature that courts shall vigorously use its [sic] sanctions authority to deter that improper conduct or comparable conduct by others similarly situated.

"(i) This section shall apply to a complaint or petition filed on or after January 1, 1995, and any other pleading, written notice of motion, or other similar paper filed in that matter."

of the court's further order awarding attorney's fees to opposing counsel on the sanctions motion. We consolidated the appeals on our own motion. Thereafter, we dismissed the appeal in case No. C049885 for mootness as to the minors but not as to Wolff. This leaves attorney Wolff's appeals from the sanctions orders.

We shall affirm the judgment.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

The motion for which attorney Wolff was sanctioned attacked the Sacramento County juvenile court's contract system for appointing dependency conflict counsel. Under that system, established in 1999 and subsequently amended, attorney Dale S. Wilson (real party in interest and respondent on appeal) undertook to create entities to represent indigent adults, then to supervise the entities administratively while maintaining a "glass wall" between them and his own practice, as well as between the entities themselves. Wolff's motion asserted the entities were Wilson's alter egos and all counsel appointed in the case had conflicts of interest. Wilson, not an attorney of record in these proceedings, sought and obtained leave from the juvenile court to oppose the motion, then additionally moved for sanctions under section 128.7.<sup>2</sup> After denying Wolff's motion, the juvenile court referee granted the sanctions motion.

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<sup>2</sup> Wolff claimed Wilson lacked standing because he was not a party or an attorney for a party. On appeal, she purports to renew this argument, but her opening brief fails to raise it under a proper heading. Accordingly, it is forfeited. (Cal.

### **The juvenile court's appointment system**

The Sacramento County juvenile court appoints counsel for indigent adults in dependency proceedings under a standing order. The order in effect at the time of these proceedings provides in part:

"Appointment of Counsel for Mothers and Presumed Fathers

"Pursuant to [Welf. & Inst. Code] section 317[, subdivision] (c)<sup>3</sup> and [Cal. Rules of Court] rule 1438(a)(2)(B), [now rule 5.660] the Court has entered into a contract with the Law Office of Dale Wilson, a qualified provider, for the representation of parents in dependency matters, to be compensated on an annual basis for all appearances by that party during the fiscal year. That office is automatically appointed to represent each mother and presumed father of a child who is the subject of a section 300 or 342 dependency petition. . . .

"[¶] . . . [¶]

"The Law Office of Dale Wilson shall organize itself into separate divisions under its administrative supervision and/or contract with other conflict-counsel as are necessary to accept

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Rules of Court, rule 8.204(a)(1)(C); *Heavenly Valley v. El Dorado County Bd. of Equalization* (2000) 84 Cal.App.4th 1323, 1346 (*Heavenly Valley*); *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830, fn. 4.) In any event, we agree with the juvenile court and amicus curiae Sacramento County Counsel (County Counsel) that Wilson had standing to oppose a motion which called the named defendants his alter egos. (See *Ellis v. Roshei Corp.* (1983) 143 Cal.App.3d 642, 645, fn. 3.)

<sup>3</sup> All further undesignated section references are to the Welfare and Institutions Code.

the automatic appointments to represent parents in dependency proceedings. A 'glass wall' protocol, consistent with the requirements of *People v. Christian* (1996) 41 Cal.App.4th 986, shall be maintained to prevent the sharing of any confidential or privileged information by members of any division of the Law Office of Dale Wilson with members of the other divisions or with other conflict-counsel. Such divisions shall include, but are not limited to, the Parent Advocates of Sacramento (PAS), Dependency Associates of Sacramento (DAS) and Sacramento County Juvenile Defenders (SCJD).

"Upon such automatic appointment of the Law Office of Dale Wilson to represent parents in a dependency case, it shall examine the circumstances of the case and determine whether a legal conflict of interest exists that would prevent a single lawyer from that office from representing all of the parents named in the petition. Upon the determination of such a conflict, the Law Office of Dale Wilson shall assign the representation of the parents for whom a conflict of interest would exist to separate divisions of its office or other conflict-counsel under its administrative supervision, to the extent required by the contract with the Court."

The amended contract operative at the time of these proceedings provides that the Law Offices of Dale S. Wilson, a firm which represents indigent parties in dependency proceedings, is authorized to provide legal representation for up to four indigent parents, subcontracting as necessary, so long as no conflict of interest arises for Wilson. The contract

requires Wilson to meet performance standards for provision of these services and to report periodically to the court on the matters covered by the contract.

To implement the original contract, which provided for two levels of conflict representation, Wilson created PAS and DAS. When the contract was amended to add two more levels of representation, Wilson began to use independent contract attorneys for the third and fourth adults rather than create additional entities.<sup>4</sup>

#### **Appointment of counsel in these proceedings**

DAS was appointed to represent the father of minor Mark B., Jr. An attorney from SCJD was appointed to represent the father of minor Caryssa C. A different attorney from SCJD was appointed to represent another biological father in the case, after the Law Office of Dale S. Wilson received the original appointment. Leslie B., the mother, was initially represented by PAS.

#### **Wolff's appearance and filings**

After the initial jurisdictional and dispositional hearing, appellant Julie Lynn Wolff substituted in as Leslie B.'s retained counsel on July 20, 2004. Almost immediately thereafter, Wolff filed a "Motion to Dismiss Attorneys for

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<sup>4</sup> Wilson declared this system emulated that of the Santa Clara County juvenile court in San Jose, designated as a model court for such systems. He and the Sacramento County court entered into their contract after multiple meetings, multiple visits by Wilson to the San Jose court, and Wilson's hiring of a consultant to help set up the system.

Actual, or Apparent, Undisclosed Conflict of Interest" (the conflict motion). She filed a "Supplement" to the motion on September 1, 2004, shortly before it was scheduled to be heard.

*The conflict motion*

The conflict motion, which does not attach any supporting evidence, asserts: "The Law Offices of Dale Wilson are appointed to represent the adults in a dependency case. Despite any claim of PAS/DAS, or other appointments, all appointments are through the Law Offices of Dale Wilson, with attorneys sometimes identifying themselves as PAS or DAS (not legally recognized entities in California according to the undersigned's research into the matter), and other times as 'The Law Offices of Dale Wilson.' It is Dale Wilson who is expected to pay for transcripts for either PAS or DAS, . . . on whose behalf objections are made, and who, per the Court's statements, is required by the Presiding Judge to make all appointments for court ordered attorneys for adults in Sacramento County juvenile dependency cases. . . . Mr. Wilson, one way or the other, is in charge of all the appointments of attorneys in dependency cases. This was never disclosed to mother. No waiver was ever requested, no oral or written disclosures made by counsel, no waiver ever given." This arrangement violates rule 3-310 of the Rules of Professional Conduct (avoiding the representation of adverse interests), mandating the dismissal of the attorneys "appointed by/employed by" Wilson.

*The "supplement"*

Wolff's hundred-page "supplement" purports to provide evidence and argument to support the motion's allegations.

Evidence

The supplement sets out the court's standing order as part of Wolff's supporting declaration. As exhibits, it attaches: (1) the court's contract with Wilson (in several versions); (2) photocopied Yellow Pages advertisements and listings for Wilson's law firm (showing its address as 2001 21st Street, Sacramento, and its telephone number as 454-2889); (3) a State Bar online entry for attorney Scott M. Fera dated August 22, 2004, showing the Sacramento County Counsel's Office as his employer; (4) a letter on PAS letterhead dated April 1, 2004, showing the address 2001 21st Street, Suite 100, Sacramento, California 95818, the telephone number (916) 731-4981, and a masthead which includes Fera as well as "Managing Attorney" John P. Passalacqua; (5) a State Bar online entry for Passalacqua dated August 21, 2004, apparently showing the Law Offices of Dale S. Wilson as his employer but giving the address and telephone number shown on the letter from PAS; (6) a State Bar online entry for Dale S. Wilson dated August 21, 2004, showing the address 2001 21st Street #200, Sacramento, California 95818, and the telephone number (916) 454-2889; and (7) an undated Website entry for the Law Offices of Dale S. Wilson, showing Passalacqua as an attorney with that office.

Argument

The "Supplement" asserts among other things:

Wilson is compensated for all appointed attorneys, regardless of their labels. They are under his supervision and control and he is expressly responsible for their performance.

An "amendment" to Wilson's contract dated July 1, 2001, which states that it supersedes prior agreements and newly authorizes Wilson to represent the third and fourth parents in juvenile proceedings, gives Wilson until August 25, 2001, "to comply with ethical standards by instituting a 'glass wall.'" This language shows that Wilson had not yet done so.<sup>5</sup>

Attorneys working for Wilson are required to violate their clients' confidences insofar as they also represent the clients in drug court under the contract.

The contract does not require Wilson to disclose his representation of multiple parties, to reveal conflicts to clients, or to obtain waivers from them.

The Law Office of Dale Wilson is not a California corporation and the entities PAS, DAS, and SCJD have no fictitious business names on file. These entities are really one, and Wilson is "the sole legal entity behind all those labels[.]"

Wilson has one office at 2100 21st Street, Sacramento, where all attorneys for PAS and DAS work. There is only one

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<sup>5</sup> The cited language (an addendum, not an amendment) actually states: "CONTRACTOR will have thirty (30) days from date of fully executed agreement, to comply with ethical standards by instituting a 'glass wall' *for representation of third and fourth level parent conflict cases.*" (Italics added.)

entrance to Wilson's office for all his clients, whether private or court-appointed.

Wilson's Yellow Pages advertisements claim his office has handled over 25,000 cases. A number so great must include the cases nominally handled by the entities.

In the present case, the appointed attorneys, including Leslie B.'s original counsel, have provided ineffective assistance and revealed actual conflicts of interest in numerous ways. In one instance, DAS attorney Jessica Taphorn had possession of Leslie B.'s drug court file, tried to interview her, and was scheduled to represent her in drug court before Wolff, who had already substituted in as Leslie B.'s counsel, intervened.<sup>6</sup>

#### Witness list

Leslie B. "anticipates" calling among others: Wilson; all attorneys appointed in Sacramento County juvenile dependency proceedings since the inception of Wilson's contract, including six named attorneys with PAS, five with DAS, and five with SCJD; the juvenile court's presiding judge; all juvenile court referees; all juvenile dependency court reporters; and all other adult parties in this case.<sup>7</sup>

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<sup>6</sup> These allegations appear in Wolff's supporting declaration. No other evidence is offered for the specific charges against counsel. We omit the other charges because the juvenile court referee did not discuss them in ruling on the motion.

<sup>7</sup> Before reciting this list, Wolff asserts: "Wilson has the burden of proving he (and his attorney employees, etc.) should not be disqualified[.]" It is hard to grasp how Wolff could

### **Wilson's opposition and notice of intent to seek sanctions**

After obtaining the court's permission to oppose the motion, Wilson retained counsel and filed opposition. He also gave notice of intent to seek sanctions against Wolff.

#### *The opposition*

The opposition, supported by declarations from Wilson, PAS managing attorney John Passalacqua, DAS managing attorney Stephen Nelson, and DAS attorney Jessica Taphorn, asserts:

Wilson has created the "glass wall" required by *People v. Christian* (1996) 41 Cal.App.4th 986 (*Christian*).<sup>8</sup> Each entity has a separate office, telephone number, letterhead, pleading paper, business cards, confidential files, support staff, computers, and printers. The managers of Wilson's office and the entities supervise only their own staffs. All staff are

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seriously claim both that Wilson himself had this burden and that he could not be heard to oppose her motion.

<sup>8</sup> The official "Summary" of *Christian, supra*, 41 Cal.App.4th 986, a criminal case, provides in part: "The court held that there was no violation of defendant's constitutional right to conflict-free counsel, even though one of the two defendants was represented by an attorney from the public defender's office, and the other was represented by the alternate defender's office. Although the county public defender was nominally in charge of both offices, he was an overseer only in a strict administrative sense; he was not involved in any way in the day-to-day operations of the alternate defender's office. In addition, attorneys from the two offices remained physically apart, had no access to each other's files, and adhered to a well-known policy of keeping all legal activities completely separate, such that the offices were separate 'firms.' There was no evidence that those 'ethical walls' had been ineffective in avoiding conflicts of interest between the two offices; hence, an ethical separation existed in fact between the two." (*People v. Christian, supra*, 41 Cal.App. 4th at p. 986.)

trained to recognize the entities' separateness and to treat other entities as opposing counsel with respect to client confidentiality.

All files for clients assigned to independent contract attorneys are maintained by those attorneys, not by Wilson's office, PAS, or DAS. No one from Wilson's office has access to such files or knows any confidential information about those clients. Wilson does not supervise, hire, or fire such attorneys or their staff. PAS and DAS treat those attorneys as opposing counsel.

Wilson is the administrative director of PAS and DAS and the managing attorney of his own firm. His contract requires him to report to the juvenile court on the caseload of PAS, DAS, and independent contract attorneys, to assign cases, and to ensure that conflicts of interest do not arise. However, PAS and DAS are separate from Wilson's office. Each has its own managing attorney. Wilson has no hiring, firing, or disciplinary authority over PAS and DAS employees. Although PAS, DAS, and Wilson's office are in the same building, each has its own separate locked office, telephone number, equipment, supplies, and support staff. All PAS files are kept in white file folders, all DAS files in red file folders, and all files of Wilson's clients in blue folders. All staff are trained in the "glass wall" principle, and any infraction is grounds for discipline by that staff person's managing attorney.

Leslie B. had argued that *Christian, supra*, 41 Cal.App.4th 986, was inapposite because a public agency, not a private

attorney, created the separate units and firms described there. However, the decision does not make that distinction. Moreover, as in *Christian*, a public agency (the county) funds all attorneys appointed under Wilson's contract. Wilson may not represent any party in a case in which he has referred another party to PAS, DAS, or an independent contractor, regardless of how he would be paid.

Wilson's contract also requires him to provide an attorney to attend dependency drug court, which operates a treatment and recovery program known as STARS. Non-confidential STARS reports are sent to PAS or DAS; all such reports for non-PAS and non-DAS clients are placed in a file folder and taken to drug court for the attorney representing the STARS client. DAS attorney Jessica Taphorn was assigned to drug court on August 4, 2004. DAS managing attorney Stephen Nelson instructed her to give Leslie B.'s STARS reports to her attorney, Wolff. Taphorn did so. At no time did Taphorn or other DAS attorneys have Leslie B.'s PAS dependency file.

*Notice of intent to seek sanctions*

Along with Wilson's opposition, he requested a continuance of the hearing on the motion to "allow [the] Court to consider sanctions against Julie Lynn Wolff under [] section 128.7." Wilson's retained counsel, Charles Post, declared as relevant that he had written to Wolff on December 24, 2004, advising her he would seek sanctions if she did not withdraw the motion, and Wolff had refused to do so.

### **The sanctions motion**

On January 11, 2005, Wilson filed a motion for sanctions against Wolff under section 128.7, citing all grounds specified in the statute. (See fn. 1, *ante.*) Wilson asserted that juvenile courts can order section 128.7 sanctions, but did not cite any authority on point.

### **The court's ruling on the conflict motion**

On March 29, 2005, juvenile court referee Carol Chrisman issued a written order denying the conflict motion.

On the merits, Referee Chrisman found: (1) It did not *per se* violate the "glass wall" principle for a private law office, rather than a government agency or a nonprofit entity, to be the contractor in a conflict counsel arrangement. (2) The Wilson Law Offices had set up the required "glass wall." (3) Leslie B. had failed to show any breach of the "glass wall" or any actual conflict of interest as to any appointed counsel in this case.

Referee Chrisman also found: Although Wolff had indicated "there were a plethora of witnesses with relevant testimony, should the matter advance to trial," she declined to make offers of proof and submitted on the pleadings. Juvenile courts may decide disputed matters without trial if the party raising the issue refuses to make an offer of proof. Here, the pleadings did not set forth sufficient evidence to warrant a trial. In any event, there was no showing that any possible transgression had had or could have any continuing effect on the proceedings; Leslie B. had already used the State Bar's administrative

remedy; and PAS and DAS no longer represented any parties in the case.

### **The court's orders on the sanctions motion**

On March 9, 2005, after argument on the sanctions motion, Referee Chrisman requested supplemental briefing on the juvenile court's authority to order section 128.7 sanctions. Only Wilson responded.

On April 20, 2005, Referee Chrisman granted the motion and ordered sanctions in the amount of \$1,000 payable to the court, plus reasonable attorney's fees and expenses to Wilson as per proof. We set out her key findings in part III of the Discussion, *post*.

On June 3, 2005, after reviewing Wilson's documentation of his fees and expenses, Referee Chrisman ordered Wolff to pay the sum of \$5,989.50 as attorney's fees to the Law Offices of Dale Wilson.<sup>9</sup> The order notes that Wolff did not file an objection or any other response to Wilson's claimed fees and expenses.

## **DISCUSSION**

### **I**

The first issue is whether the juvenile court in dependency proceedings may impose sanctions under section 128.7. We conclude it may.

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<sup>9</sup> Referee Chrisman disallowed a substantial part of the sum Wilson sought: though his claimed hourly rates for counsel were reasonable, some expenses were not reasonably expended in pursuing the sanctions motion, and the descriptions of others had been redacted so that Referee Chrisman could not determine whether they were incurred on the sanctions motion.

Section 128.7 provides in part (*italics added*):

"(b) By presenting to *the court* . . . a pleading, petition, written notice of motion, or other similar paper, an attorney . . . is certifying that to the best of [his] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

"(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

"(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

"(3) The allegations and other factual contentions have evidentiary support or . . . are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

"[¶] . . . [¶]

"(c) If . . . *the court* determines that subdivision (b) has been violated, *the court* may . . . impose an appropriate sanction upon the attorneys . . . that have violated subdivision (b) . . . .

"(1) . . . . Notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to *the court* unless, within 21 days after service of the motion, or any other period as *the court* may prescribe, the challenged paper .

. . is not withdrawn or appropriately corrected. If warranted, *the court* may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. . . .

"(2) On its own motion, *the court* may enter an order describing the specific conduct that appears to violate subdivision (b) . . . .

"[¶] . . . [¶]

"(e) When imposing sanctions, *the court* shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.

"(f) In addition to any award pursuant to this section for conduct described in subdivision (b), *the court* may impose punitive damages against the plaintiff . . . .

"[¶] . . . [¶]

"(h) A motion for sanctions brought . . . primarily for an improper purpose . . . shall itself be subject to a motion for sanctions. It is the intent of the Legislature that *courts* shall vigorously use its [*sic*] sanctions authority to deter that improper conduct or comparable conduct by others similarly situated.

"(i) This section shall apply to a complaint or petition filed on or after January 1, 1995, and any other pleading, written notice of motion, or other similar paper filed in that matter." (See fn. 1, *ante*.)

In construing statutes, we look first to their plain language. (*People v. Statum* (2002) 28 Cal.4th 682, 689.)

Section 128.7 repeatedly speaks of "the court" or "courts" without restriction. It cites the full range of pleadings that may be filed in civil court, whether in an action or a special proceeding. (Cf. Code Civ. Proc., §§ 21-23.) Juvenile dependency proceedings are special proceedings. (*In re Chantal S.* (1996) 13 Cal.4th 196, 200; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 328.) Section 128.7 expressly covers both "complaint[s]," which commence civil actions (Code Civ. Proc., § 350), and "petition[s]," which commence special proceedings (see, e.g., Code Civ. Proc., §§ 1069, 1086, 1103, 1281.2, 1354-1355). Thus, section 128.7 on its face applies to all civil courts and civil proceedings.

Furthermore, the internal organization of a code may aid in understanding a statute's purpose (*Medical Board v. Superior Court* (2003) 111 Cal.App.4th 163, 175), and chapter and section headings in the codes may be considered in determining legislative intent. (*People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 727; *People v. Hull* (1991) 1 Cal.4th 266, 272.) Following its introductory provisions, the Code of Civil Procedure has four parts: Part 1, "Of Courts of Justice" (§§ 33-286); Part 2, "Of Civil Actions" (§§ 307-1062.20); Part 3, "Of Special Proceedings of a Civil Nature" (§§ 1063-1822.60); and Part 4, "Miscellaneous Provisions" (§§ 1855-2107). Section 128.7 is located within Part 1, which applies generally to all civil proceedings, not within Parts 2 or 3, which apply only to specified proceedings. This location suggests the Legislature

meant section 128.7 to apply across the board in every civil court and proceeding.

In addition, because section 128.7 is modeled on Rule 11 of the Federal Rules of Civil Procedure, we may look to the federal courts' interpretation of that rule. (*Eichenbaum v. Alon* (2003) 106 Cal.App.4th 967, 975, fn. 6.) They have held that Rule 11 applies to all types of civil courts and proceedings, unless some more specific sanctioning rule or statute controls. (See, e.g., *Cooter & Gell v. Hartmarx Corp.* (1990) 496 U.S. 384, 391-393 [110 L.Ed.2d 359, 392-394]; *Tri-State Steel Const. Co., Inc. v. Herman* (6th Cir. 1999) 164 F.3d 973, 980; *Child v. Beame* (S.D.N.Y. 1976) 412 F.Supp. 593, 599-601 [Rule 11 applicable to complaint brought by children placed with foster care agencies, alleging malfeasance and violations of state law].) The statutory scheme defining our juvenile dependency system does not include any such specific statute or rule. (§§ 300-395; Cal. Rules of Court, rules 5.660-5.740.)

Finally, the policy underlying section 128.7 favors its use in dependency proceedings. The statute enables courts to deter or punish frivolous filings which disrupt matters, waste time, and burden courts' and parties' resources. Such evils are especially pernicious in dependency proceedings, which should be conducted as informally and nonadversarially as possible to protect the minors' interests. (§ 350, subd. (a)(1).)<sup>10</sup> This

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<sup>10</sup> Ironically, amicus County Counsel cites this provision to show why sanctions should not be allowed in dependency proceedings. County Counsel overlooks the fact that a frivolous

case makes the point starkly: according to the sanctions order, Wolff's conflict motion derailed the pending proceedings and "set into action a series of hearings that delayed the proceedings for [eight] months." If anything, juvenile courts hearing dependency cases need section 128.7 even more than do civil courts in general.

The contrary arguments of Wolff and amicus County Counsel are unpersuasive.

Wolff and County Counsel note that "[a] superior court convened as and exercising the special powers of a juvenile court is vested with jurisdiction to make only those limited determinations authorized by the legislative grant of those special powers. [Citations.]" (*In re Lisa R.* (1975) 13 Cal.3d 636, 643; accord, *People v. Nguyen* (1990) 222 Cal.App.3d 1612, 1619; *In re Jody R.* (1990) 218 Cal.App.3d 1615, 1622-1623.) They then assert that the "determination" to impose sanctions is not within this legislative grant of power because sections 300 through 395, the enabling legislation for dependency proceedings, do not expressly incorporate section 128.7 or any other sanctions provision.<sup>11</sup> Even if a sanctions order is a

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filing in a dependency proceeding will normally kill any chances to keep matters informal and nonadversarial, as Wolff's motion did here.

<sup>11</sup> County Counsel notes that section 247.5 expressly incorporates Code of Civil Procedure sections 170 and 170.6 (which, like section 128.7, belong to Part 1 of that code) into juvenile proceedings, and asks why legislation was needed to do so if Part 1 provisions apply to all civil courts. The answer is twofold. First, as we discuss below, section 247.5 belongs to the statutory scheme defining the powers and duties of

"determination" as the cited cases use that term, the conclusion drawn by Wolff and County Counsel does not follow.

"Notwithstanding the absence of specific authorization to make particular determinations, a juvenile court is nevertheless vested with the authority to make such determinations which [sic] are incidentally necessary to the performance of those functions demanded of it by the Legislature pursuant to the Juvenile Court Law." (*In re Lisa R.*, *supra*, 13 Cal.3d at p. 643 [power to determine parentage]; accord, *In re Ashley M.* (2003) 114 Cal.App.4th 1, 6; *In re Jody R.*, *supra*, 218 Cal.App.3d at p. 1623.) Within Part 1 of the Code of Civil Procedure, section 128.7 appears in article 2 ("Powers and Duties of Courts") of chapter 6 ("General Provisions Respecting Courts of Justice"), immediately following section 128, which authorizes "every court" to control its proceedings by means other than sanctions. Read together, these sections constitute an express legislative grant to all courts of the incidental power to take all steps, including sanctions, necessary to perform their designated functions efficiently.

In a related argument, Wolff and County Counsel contend that section 128.7 sanctions are outside the juvenile court's power because that court is governed by its own rules and

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juvenile court referees, and its main point is to spell out what happens if a referee is disqualified, which the Code of Civil Procedure provisions do not address. Second, the fact that the Legislature sometimes expressly incorporates Code of Civil Procedure provisions into the Welfare and Institutions Code does not prove that this is the only way such provisions can apply to juvenile court proceedings.

statutes, to which the "requirements" of the Civil Code and the Code of Civil Procedure do not apply unless otherwise specified. (Cf. *In re Chantal S.*, *supra*, 13 Cal.4th at p. 200; *In re Shelley J.*, *supra*, 68 Cal.App.4th at p. 328; *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 711; *Jones T. v. Superior Court* (1989) 215 Cal.App.3d 240, 245, fn. 3; *In re Angela R.* (1989) 212 Cal.App.3d 257, 273.) We disagree.

In *In re Chantal S.*, *supra*, our Supreme Court merely stated: "Dependency proceedings in the juvenile court are special proceedings with their own set of rules, governed, in general, by the Welfare and Institutions Code." (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 200; italics added.) The court did not hold that provisions of other codes are inapplicable unless otherwise specified.

Our review of the cases cited by the parties on this question reveals that none involved application of a statute found in Part 1 ["Of courts of Justice;" §§ 33-286] of the Code of Civil Procedure.

Thus, *In re Chantal S.*, *supra*, 13 Cal.4th 196, held Family Code section 3190, applicable to custody or visitation disputes, did not apply in a dependency case because "the Legislature knows how to make the Family Code applicable to the juvenile court when it intends to do so . . . ." (*Id.* at p. 206.)

*In re Jennifer R.*, *supra*, 14 Cal.App.4th 708, and *Jones T. v. Superior Court*, *supra*, 215 Cal.App.3d 240, both held former Civil Code section 4600 (related to family law custody and visitation orders) inapplicable in dependency cases.

*In re Angela R.*, *supra*, 212 Cal.App.3d 257, held Code of Civil Procedure section 585, applicable to defaults in civil "actions," was inapplicable in a "special proceeding" brought under former Civil Code section 232. (*Id.* at p. 273.)

The provisions of Part 1 of the Code of Civil Procedure ("Of Courts of Justice") are of a different nature from any of the foregoing statutes. The statutes in Part 1 provide for the fundamental empowerment of the courts, including the juvenile court.

Thus, to pick but a few examples, Code of Civil Procedure section 71 provides that, "[t]he process of superior courts shall extend throughout the state." Code of Civil Procedure section 74 provides, "Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the Court from sitting at any time." Code of Civil Procedure section 128 provides in pertinent part: "(a) Every court shall have the power to do all of the following: [¶] (1) To preserve and enforce order in its immediate presence. [¶] (2) To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority. [¶] (3) To provide for the orderly conduct of proceedings before it, or its officers. [¶] (4) To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein. [¶] (5) To control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding

before it, in every matter pertaining thereto. [¶] (6) To compel the attendance of persons to testify in an action or proceeding pending therein, in the cases and manner provided in this code. [¶] (7) To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties. [¶] (8) To amend and control its process and orders so as to make them conform to law and justice."

Could anyone contend that these provisions of part 1 of the Code of Civil Procedure, providing for the fundamental power and authority of *all* courts, do not apply to a juvenile court hearing a dependency case? We think not. Rather, we believe it beyond dispute that many statutes in part 1 of the Code of Civil Procedure must apply to juvenile courts hearing dependency cases without express incorporation in the Welfare and Institutions Code. In our view, section 128.7 is one of these.

Wolff and County Counsel contend juvenile courts lack "inherent power" to impose sanctions and exceed their jurisdiction by doing so. (Cf. *Bauguess v. Paine* (1978) 22 Cal.3d 626, 635-639 [superseded by statute, as stated in *Olmstead v. Arthur J. Gallagher & Co.* (2004) 32 Cal.4th 804, 809].) But section 128.7 authorizes juvenile courts, like other civil courts, to impose sanctions without resort to "inherent power"; therefore the use of that authority does not exceed their jurisdiction.

Finally, County Counsel asserts public policy does not favor sanctions in dependency proceedings. But if sanctions are

authorized by statute, contrary "public policy" arguments must fail because statutes codify public policy. County Counsel's speculative "parade of horrors" -- a "chilling effect on the filing of juvenile dependency petitions" and an "increase [in] the volume of juvenile dependency appeals" -- is better addressed "on the other side of Tenth Street, in the halls of the Legislature." (*Osborn v. Hertz Corp.* (1988) 205 Cal.App.3d 703, 711.) In any event, we have already said that the policy underlying section 128.7 favors its use in dependency proceedings. (See Discussion at pp. 22-23, *ante*.)

For all the above reasons, we conclude that the juvenile courts may order sanctions under section 128.7 in dependency proceedings.

## II

The next issue is whether a juvenile court referee is authorized to order sanctions pursuant to section 128.7. We conclude the answer is "yes" because a juvenile court referee in dependency proceedings has essentially the same powers as a judge and any differences are not material to this issue.

Government Code section 71622 authorizes trial courts to appoint subordinate judicial officers, including referees. Sections 247.5 through 254 define juvenile court referees' powers and duties.

"A referee shall hear such cases as are assigned to him or her by the presiding judge of the juvenile court, with the same powers as a judge of the juvenile court, except that a referee shall not conduct any hearing to which the state or federal

constitutional prohibitions against double jeopardy apply unless all of the parties thereto stipulate in writing that the referee may act in the capacity of a temporary judge." (§ 248.) Except for orders removing minors from their homes, which require the express approval of a juvenile court judge (§ 249), all orders issued by referees become immediately effective and continue in full force and effect until vacated or modified upon rehearing by order of a juvenile court judge. (§ 250.) Although a party may petition for rehearing of any referee's order by a juvenile court judge, the judge may deny rehearing if the proceedings before the referee were officially transcribed. (§ 252.)

Thus, the statutory scheme authorizes a juvenile court referee in dependency proceedings to make almost any order (subject to rehearing by a juvenile court judge) which a judge could make. This authority necessarily includes the authority to order sanctions pursuant to section 128.7.<sup>12</sup>

County Counsel disagrees, citing article VI, section 22 of the California Constitution, which states: "The Legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform *subordinate judicial duties*." (Italics added.) But the Legislature has provided that the "subordinate judicial duties" juvenile court referees may perform in dependency proceedings include almost all the duties juvenile court judges may perform, subject only to rehearing by such judges. (§§ 248-252.) Unless this statutory

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<sup>12</sup> We have no occasion to discuss other possible sanctions.

scheme is unconstitutional, which County Counsel does not argue, its more specific language controls.

County Counsel also cites *In re Edgar M.* (1975) 14 Cal.3d 727 at page, 732; *In re Damon C.* (1976) 16 Cal.3d 493 at page 498; and *In re Darrell P.* (1981) 121 Cal.App.3d 916 at page 923. However, it fails to explain how these decisions support its argument. We conclude they do not.

*In re Edgar M.*, *supra*, and *In re Damon C.*, *supra*, construe a now-repealed provision (former § 558, repealed by Stats. 1976, ch. 1068, § 17, p. 4781) which governed juvenile *criminal* proceedings. (*In re Damon C.*, *supra*, 16 Cal.3d at p. 498; *In re Edgar M.*, *supra*, 14 Cal.3d at p. 732.) *In re Darrell P.*, *supra*, holds that a juvenile court in a criminal proceeding can constitutionally order a rehearing under section 252 without first obtaining a transcript of testimony heard by a referee. (*In re Darrell P.*, *supra*, 121 Cal.App.3d at p. 918.) None of these decisions holds or implies that juvenile court referees may not order sanctions under section 128.7.

Finally, County Counsel asks us to decide whether, if referees have the authority to order sanctions under section 128.7, those orders are subject to rehearing by juvenile court judges under section 252. County Counsel has requested judicial notice of purported Sacramento County juvenile court orders in other cases which hold that referee-made sanctions orders are not subject to rehearing. Although we granted the request for judicial notice, we conclude the question is not properly before us because Wolff did not seek rehearing of the sanctions order

against her. We decline to issue an advisory opinion on this point. (Cf. *People v. Slayton* (2001) 26 Cal.4th 1076, 1084.)

### III

Having found that the sanctions order (including the award of attorney's fees) was lawfully made, we must decide whether to uphold it. Again, the answer is "yes."

#### **The rationale for sanctions**

In the first order on the sanctions motion, after determining that the juvenile court may order sanctions under section 128.7 and that Wilson had complied with the statute's due process requirements, Referee Chrisman found:

Section 128.7, subdivision (b), requires an attorney to certify that any motion is not being presented primarily for an improper purpose, that the claims or defenses asserted are warranted by existing law or a nonfrivolous argument to extend or change the law, and that the allegations made have evidentiary support or are likely to do so after a reasonable opportunity for further investigation or discovery. Wolff's motion was sanctionable for lack of evidentiary support.<sup>13</sup>

The court had "painstakingly reviewed" the "copious documents, exhibits and motions" filed by Wolff, though "[t]he task of ferreting out the evidence in support of the motion was

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<sup>13</sup> Referee Chrisman found that Wilson's evidence "raise[d] a suspicion of improper motive behind the disqualification motion," but was insufficient to prove such a motive. Furthermore, though incorrect, Wolff's legal analysis identified the key issue and cited the relevant cases; thus her motion did not lack legal basis.

made exceedingly difficult by Ms. Wolff's style of pleading. Ms. Wolff's tendency to include in a single pleading multiples [sic] motions, requests and arguments on multiple topics made it exceedingly difficult to determine which arguments and evidence were relevant to which motion." Even after "innumerable hours" perusing Wolff's filings, some exhibits appeared irrelevant.

*"The real crux of the issue is that although Ms. Wolff filed two pretrial statements purporting to call as witnesses in support of her motion 16 attorneys, 8 judicial officers, the parents and court reporters . . . , not one offer of proof or declaration or other form of evidence from these sources was filed. . . . The Court assumed these pretrial statements were filed with the requisite reasonable inquiry completed and that these witnesses had relevant testimony supporting a factual basis for the disqualification motion. The Court certainly took notice of the fact that the potential witness list was comprised of court employees and officers of the court. Due to the proposed witnesses, the motion had enhanced credibility and caused the Court to immediately set the matter for a trial, as clearly there was a significant issue to be litigated.*

"Later, at the status conference after the judicial disqualification motion was denied, the Court requested offers of proof and declarations from counsel for prospective witnesses to aid in controlling the litigation. The Court also thought that the matter might settle short of a trial if Ms. Wolff submitted a declaration from an attorney or client alleging facts that the glass wall was breached. With credible evidence

presented at the hearing, the matter may [sic; might] well have concluded without a trial and with a ruling in favor of Ms. Wolff.

*"When the hearing was held, however, Ms. Wolff simply submitted on her pleadings. Ms. Wolff submitted no declarations from attorneys, current or former clients of Wilson Law Offices, judicial officers, court reporters or attorneys named in the witness list. Likewise, Ms. Wolff submitted without a single offer of proof or an explanation that she attempted to secure the evidence, but was thwarted by a lack of cooperation by potential witnesses. [Fn.]*

*"Ms. Wolff's motion was based primarily on numerous statements that PAS, DAS, and SCJD do not operate as separate law firms. Ms. Wolff's opinions were completely unsupported by any evidence. . . . Ms. Wolff clearly had an opinion, perhaps even a hunch, or wishful thinking that a breach occurred, but no concrete evidence was presented. Ms. Wolff was provided with significant information about the location of the various offices, the structure of the organization and clarification of the drug court file issue. Yet, Ms. Wolff chose not to correct or withdraw her motion during the safe harbor period required by section 128.7. [See fn. 1, ante.]*

*"The Court finds that the motion for disqualification was filed with a lack of reasonable inquiry under the circumstances and caused an unnecessary delay and added expense to the litigation. [Fn.] Further, the Court finds that the motion alleged there were facts and evidence to show a breach of the*

*'glass wall' and yet no factual support and evidence was presented that Ms. Wolff had, or was likely to have, factual support with further investigation or discovery. [Fn.]"*

### **Analysis**

A court may impose monetary sanctions on an attorney or party who has violated any of the statutory conditions authorizing the imposition of sanctions; it is not necessary to show that they have all been violated. (§ 128.7, subd. (c); *Eichenbaum v. Alon, supra*, 106 Cal.App.4th at p. 976.) To win reversal of the sanctions order, Wolff must show it was an abuse of discretion. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [appellant's burden to show reversible error]; *Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 167 [abuse-of-discretion review of sanctions orders]; see *In re Marriage of Burgard* (1999) 72 Cal.App.4th 74, 82 [abuse-of-discretion review of attorney's fee awards pursuant to sanctions orders].) She has not done so.

This court recently chastised Wolff for egregiously violating basic standards of appellate practice. We spelled out in great detail what is expected of attorneys on appeal and how Wolff's performance fell short. (*In re S.C.* (2006) 138 Cal.App.4th 396.) It has not improved.

"To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.] When a point is asserted without argument and authority for the proposition, 'it is deemed to be without

foundation and requires no discussion by the reviewing court.' [Citations.] Hence, conclusory claims of error must fail." (*In re S.C.*, *supra*, 138 Cal.App.4th at p. 408.) As already noted (see fn. 2 *ante*), so must any points not raised under proper headings. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Heavenly Valley*, *supra*, 84 Cal.App.4th at p. 1346; *Opdyk v. California Horse Racing Bd.*, *supra*, 34 Cal.App.4th at p. 1830, fn. 4.) Unexplained string citations to the record or to authority do not support a proposition, and we are not required to try to fathom their intended purpose. (*In re S.C.*, *supra*, 138 Cal.App.4th at pp. 411-412.)

Wolff's argument begins with the heading: "The Court Erred in Awarding Mr. Wilson, And The Court, Attorney's Fees Pursuant to His CCP §128.7 [*sic*] Motion." This is a bad start. A court does not award itself "attorney's fees" when imposing sanctions under section 128.7. A sanction thereunder "may consist of, or include, directives of a nonmonetary nature, *an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.*" (§ 128.7, subd. (d); italics added.) In other words, "a penalty [paid] into court" and attorney's fees paid to the movant are two different things, both of which a court may order on a sanctions motion brought by a party, as here. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter

Group 2006) ch. 9, § 1219, pp. 9(III)-31, 32; Fed. Rules Civ.Proc., rule 11(c)(2), 28 U.S.C., & Advisory Committee notes (West's 2006 Supp.) p. 443, [construing identical language of federal rule]; see *Malovec v. Hamrell* (1999) 70 Cal.App.4th 434, 443-444 [court imposing sanctions on its own motion may order only penalty payable to court].)

Wolff then asserts: "Mr. Wilson, an 'attorney[] who neither [is], nor represent[s] parties' in the dependency case, is no more a party authorized to seek CCP § 128.7 [*sic*] sanctions in the dependency case, 'as he was named in the declaration' (CT 1191; RT 117:1-126:18),<sup>[14]</sup> than the attorney who wrongfully sought sanctions pursuant to CCP § 128.5 [*sic*] in *Capotosto v. Collins* (1991) 235 Cal.App.3d 1439, 1442, 1444." This assertion misfires.

Wolff's standing contention (if that is what it is) is forfeited for failure to present it under a heading or subheading that summarizes it. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Heavenly Valley, supra*, 84 Cal.App.4th at p. 1346; *Opdyk v. California Horse Racing Bd., supra*, 34 Cal.App.4th at p. 1830, fn. 4.) In any event, it is meritless. As we have explained, Wolff made Wilson a party to the conflict motion by pleading that the named defendants were his alter egos and asserting that *he* had the burden of proving *he* should not be

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<sup>14</sup> Internal record citations in quotations from Wolff's opening brief are retained unless otherwise indicated.

disqualified; after that, he was entitled to seek any relief which might be available to the target of a frivolous motion. Nothing similar happened in the case Wolff relies on.

Finally, Wolff's internal quotation marks and record citations are baffling: the first purported quotation is unsourced, and the second, consisting of a single phrase, is said to be found on 10 consecutive pages of reporter's transcript. We need not and will not try to untangle this mess. (*In re S.C.*, *supra*, 138 Cal.App.4th at pp. 411-412.)

When Wolff turns to the sanctions order, things get worse. As we noted in our previous opinion involving Wolff, "'it is the duty of an attorney' to 'employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.'" (Bus. & Prof. Code, § 6068, subd. (d).)" (*In re S.C.*, *supra*, 138 Cal.App.4th at p. 419.) That observation prefaced a discussion of Wolff's misrepresentation of the record. (*Id.* at pp. 419-420.) Undeterred by our remarks, she now selectively quotes and misrepresents the sanctions order.

According to Wolff, "Referee Chrisman granted the CCP § 128.7 [*sic*] sanctions, based on '. . . misconduct by a party seeking to wrongfully deprive a child of his or her parent's care and affection by the filing of a pleading with no basis in fact or law or which was filed solely to harass or vex a parent.'" (CT 2017-2018)." (Italics added.) Wolff then

asserts: Wilson never claimed to be the parent of any child involved in these proceedings; the conflict motion was not filed "to wrongfully deprive a child of his or her parent's care and affection," "solely to harass or vex a parent"; Wolff's client was trying to protect her parental rights and her children's interests. None of this has anything to do with the real purpose of the language Wolff plucks from the order.

Contrary to Wolff's assertion, the passage she quotes as a sentence fragment preceded by three dots *was not meant to explain why the court granted the motion for sanctions*. Rather, it is part of the referee's prefatory finding that juvenile courts can impose sanctions.

In the referee's order, under the subheading "Authority of Juvenile Court to Impose Sanctions" (the first subheading after the general heading "Findings"), after finding that the statutory scheme gives the juvenile court this authority, referee Chrisman rejects Wolff's contrary "public policy" arguments on the following grounds, which include the sentence Wolff quotes out of context (here quoted in full and italicized):

"Juvenile dependency courts preside over cases involving the abuse or neglect of a child by a parent. Appellate courts recognize that while each division of the superior court is vitally important to the litigants and society, 'there is no division of greater importance than the juvenile court, which deals with the sensitive parent-child relationship and the

potential of horrendous damage to children.' [Citations.] It is unfathomable that a juvenile court should be less interested in insuring that the pleadings and petitions filed in its cases are based in law and fact, and are filed with a proper motive, than a court adjudicating any other dispute. [¶] Moreover, *it is unacceptable that the juvenile court could hold no one accountable nor impose a sanction to deter future misconduct by a party seeking to wrongfully deprive a child of his or her parent's care and affection by the filing of a pleading with no basis in fact or law and which was filed solely to harass or vex a parent.* Such a position leaves the court without a remedy to address egregious conduct and invites chaos into the courtroom. [¶] The Court therefore finds that section 128.7 applies in juvenile courts as it is essential as a matter of public policy that the juvenile court possess the power to punish and deter parties from filing pleadings that are without legal or factual support, and/or, are filed for an improper purpose."

It is hard to believe Wolff did not understand the real purpose of this language. In any event, the full passage reveals that Referee Chrisman was not making the absurd findings Wolff ascribes to her; she was merely illustrating the kind of mischief which could befall juvenile courts without sanctioning power. A claim of error which depends on misrepresenting the record is frivolous.

Wolff then purports to argue: "The evidence in the record does not provide substantial evidence in support of Referee

Chrisman's findings. It does, however, provide substantial evidence in support of mother's conflict of interest motion." We say, "purports to argue" because, aside from a long paragraph of string cites to the record just above the quoted statement, that statement is Wolff's entire argument. It fails for the following reasons:

1. The standard of review for a sanctions order is not substantial evidence but abuse of discretion. (*Guillemin v. Stein, supra*, 104 Cal.App.4th at p. 167.)

2. A mere conclusory assertion is not a legal argument, and any point so raised is deemed abandoned. (*In re S.C., supra*, 138 Cal.App.4th at p. 408.)

3. Even if substantial evidence were the standard of review on this issue, a proper argument would require examining all the evidence to show that no substantial evidence supports the order. Wolff has not done this. "'A recitation of only [appellant's] evidence is not the 'demonstration' contemplated under the above rule. [Citation.] Accordingly, if, as [appellant] here contend[s], 'some particular issue of fact is not sustained, [appellant is] required to set forth in [her] brief *all* the material evidence on the point *and not merely* [her] own evidence. Unless this is done the error is deemed to be [forfeited]." (Italics added.) [Citations.]' [Citations.]" (*In re S.C., supra*, 138 Cal.App.4th at pp. 414-415.) By her own account, Wolff's long paragraph of string cites to the record includes only her own evidence. Wolff ignores the evidence

cited by Referee Chrisman in support of the sanctions order, which we have set out above. Thus, even if a showing that no substantial evidence supported the order might have established an abuse of discretion, Wolff has forfeited any such contention.

4. Wolff introduces the aforementioned 20-line paragraph of string cites to the record as follows: "The exhaustive citations to the evidence in the record, which mother submitted in support of her conflict of interest motion, are detailed in the arguments above, including particularly, at pp. 18-19, 21-22, and 25-28 [of the opening brief]." This is not helpful. An appellant's duty to offer argument to support each claim of error includes explaining, under the heading where the argument is offered, how any evidence cited advances the argument. Asserting that the significance of evidence set out in a string citation will somehow reveal itself after we have tracked it down in three other parts of the brief (or more) is not a substitute. We are not obliged to make arguments for parties. (*In re S.C.*, *supra*, 138 Cal.App.4th at p. 411.)

Furthermore, the cited passages in the opening brief do not even address the sanctions order. Pages 18 and 19 come from Wolff's "Combined Statement of Facts And History of The Case." Pages 21 and 22 include the end of that section and the beginning of a section headed, "The Constitutional Protections of The Due Process And Confrontation Clauses Apply in Juvenile Dependency Cases." Pages 25 through 28 include the following section headings: "The Allegations of the Complaint Failed to

State a Cause of Action under §300(b) [sic]"; "Substantial Evidence Does Not Support the Finding the Children Were, by the Time of the Jurisdictional Hearing on June 8, Persons Described by §300(b) [sic]"; and "The Court Erred in Finding at The Dispositional/§366.21(e) [sic] Trials That Juvenile Court Intervention Should Continue." Wolff does not explain how evidence cited in parts of her brief which deal only with the mooted appeal in case No. C049885 can have anything to do with this appeal.

For all the above reasons, Wolff has failed to show the sanctions order was an abuse of discretion.

Wolff separately attacks the award of attorney's fees to Wilson. As mentioned, the standard of review for an order of attorney's fees is abuse of discretion. (*In re Marriage of Burgard, supra*, 72 Cal.App.4th at p. 82.) Again, Wolff ignores the standard of review, cites no authority on point, and makes nothing resembling a focused appellate argument. Accordingly, we could treat the issue as abandoned. However, one point requires a response.

Although Wolff raises many complaints about Wilson's fee claims, she acknowledges that the court's order states she had not responded to them before the court ruled. We do not consider points raised first on appeal which depend on questions of fact never presented to the trial court. (*Bogacki v. Board of Supervisors* (1971) 5 Cal.3d 771, 780.) Wolff tries to avoid this well-settled appellate rule by insinuating she was never

served with Wilson's documentation of his fees and costs. Her argument is disingenuous.

Wolff notes that the "Declaration of Krista J. Dunzweiler [an associate in the firm retained by Wilson] In Support of Dale S. Wilson's Motion for Sanctions Against Julie Lynn Wolff," which sets out her claimed hours and fees, indicates a hearing date of March 9, 2005, and the proof of service on Wolff shows deposit in the mail on March 9, 2005, however, the declaration states it was executed on May 9, 2005. Wolff then asserts: "As described above, this May 9, 2005 declaration, and attached Exhibit A [Dunzweiler's cost bill], itself dated April 4, 2005, were, according to the proof of service, mailed to mother's attorney March 9, 2005. Referee Chrisman did not find mother's counsel had been served with this May 9, 2005 pleading. The record is devoid of evidence to support a finding mother's counsel was served with this pleading. It would appear self evident [*sic*], that an attorney cannot reply to a pleading with which they [*sic*] have not been served." (Internal record citations omitted.)

As stated above, the hearing on the sanctions motion occurred as scheduled on March 9, 2005, but Referee Chrisman deferred ruling until she had received supplemental briefing on the court's authority to impose sanctions. On April 20, 2005, when Referee Chrisman made her first order on the motion (granting it and imposing a \$1,000 penalty on Wolff), she also ordered Wilson to file his documentation of fees and expenses no

later than May 9, 2005. In Referee Chrisman's second order ("Order Re Attorney Fees And Expenses"), dated June 3, 2005, she set out the above facts, then noted that the required documentation was filed on May 9, 2005, and Wolff had not responded to it.

Wolff has not claimed she was not duly served with the April 20 order, which gave her the court's deadline for receiving Wilson's documentation. If she did not afterward receive it, it is inexplicable that she failed to let the court know. An attorney facing an order to pay opposing counsel's fees, with only the amount in question, would be expected to notify the court promptly that counsel had missed the deadline for proving his fee claims. The record fails to show Wolff did so. Indeed, she never contested service of these documents in the juvenile court.

A trial court order is presumed correct, and all intendments and presumptions are indulged to support it on matters as to which the record is silent. (*Denham v. Superior Court, supra*, 2 Cal.3d at p. 564.) An appellant may not win reversal by simply asserting error and challenging the respondent to prove the trial court was right. (*Estate of Palmer* (1956) 145 Cal.App.2d 428, 431.) One presumption we indulge is that official duty was regularly performed. (Evid. Code, § 664.)

By observing that the court received Wilson's documentation on May 9, 2005, and Wolff had not objected or otherwise

responded to it, Referee Chrisman impliedly found Wolff had also duly received it. We presume a judge would not make an order sanctioning counsel unless satisfied that all preconditions, including proper service of all required pleadings on counsel, had been met. (Evid. Code, § 664.) A party who claims otherwise must produce evidence to support her claim. (Evid. Code, § 660.) An anomalous date on a proof of service, which could easily stem from simple human error (in this case, e.g., by substituting March 9 -- the original hearing date shown in the declaration's caption -- for May 9), is not evidence that Wolff was not duly served with the document in question. Nor does her bald assertion that "the record is devoid of evidence" she was served amount to evidence she was not: where the record is silent, the presumption of Evidence Code section 664 controls. (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 564.)

Wolff has failed to show why she is entitled to raise objections to the attorney's fee order now which she did not raise below. Thus, she has not offered a cognizable challenge to the amount of fees ordered. We therefore affirm that order.

#### IV

In a footnote at the end of Wilson's brief, he requests that this court consider sanctioning Wolff on appeal (cf. Code Civ. Proc., § 907; Cal. Rules of Court, rule 8.276(e)), without stating any reason why we should do so. Because Wilson has not

made a proper argument under a proper heading, we decline to consider his request.

**DISPOSITION**

The judgment (order of sanctions and attorney's fees) is affirmed. Dale S. Wilson shall receive his costs on appeal. (Cal. Rules of Court, rule 8.276(a)(1).)

\_\_\_\_\_  
SIMS, Acting P.J.

We concur:

\_\_\_\_\_  
BUTZ, J.

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CANTIL-SAKAUYE, J.